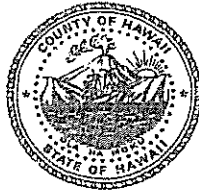


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

June 1, 2004

Mr. Klaus D. Conventz  
dba Baumeister Consulting  
P. O. Box 2308  
Kailua-Kona, HI 96745

Dear Mr. Conventz:

#### **VARIANCE PERMIT NO. 1451 WH (VAR 03-077)**

**Applicant:** KLAUS D. CONVENTZ  
**Owners:** CHARLES B. PIRES, ET AL.  
**Request:** Variance from Minimum Yards  
Pursuant to Chapter 25, Zoning  
**Tax Map Key:** 7-6-015:015

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1451 to allow portions of a commercial office building ("2-Story Building") to remain, "AS-BUILT", with a minimum 9.5 feet rear yard, minimum 9.9 front yard open space, and minimum 4.3 feet side yard open space requirement according to the variance site plan map dated October 23, 2003. The variance is from the TMK property's minimum 15.0 front yard, minimum 10.0 feet front yard open space, and 5.0 feet side yard open space permitted by Variance No. 126. The variance request is from the subject TMK property's minimum side yard stipulated by Variance No. 126, dated November 26, 1982, and County Code, Chapter 25, Zoning, Article 5, Division 9, Section 25-5-96, Minimum yards, (1) (2), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

#### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, containing 7642 square feet, being portions of R.P. 4475, L.C. Aw. 7713, and Apana 43 to V. Kamamalu, is situated at Holualoa 1<sup>st</sup> and 2<sup>nd</sup>, North Kona, Hawaii.

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The property is zoned Resort (V-1.25) by the County and designated Urban "U" by the Land Use Commission (LUC).

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about November 7, 2003. The variance application site plan map drawing is drawn to scale, dated October 23, 2003, and prepared by Wes Thomas Associates. The site plan map denotes the location of the "2-Story Building" and other site improvements, "AS-BUILT" on the property and identifies the location of encroachments within the minimum yards and attendant open yard or clear space requirements.

The applicant's background states in part:

"Besides SMM 79026, SMA 193, the property received Setback Variance No. 126 on November 26, 1982 (sic), various PLA's, and the above listed subsequent Building Permits.

The variance was granted for a 15.0-ft. front yard setback, and a 10-ft. rear yard setback.

"Owners were unaware of any problems until a survey conducted by Wes Thomas Associates on October 23, 2003, revealed some miniscule encroachments beyond the already granted variance allowances."

Note: Variance No. 126 (VAR 126) was approved pursuant to certified letter dated February 14, 1983. This variance permit letter states in part:

"the Planning Director by this letter hereby certifies the approval of an office building with a front yard setback of fifteen (15) feet and a rear yard setback of ten (10) feet as amended in lieu of the minimum twenty (20) feet front and rear yard setback as required in the Resort (V-1.25) zoned district in Holualoa 1st and 2nd Partition, North Kona, Hawaii."

3. **Agency Comments and Requirements-WH (VAR 04-077):**
  - a. The Department of Public Works (DPW) memorandum dated December 1, 2003, states in part:

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“We reviewed the subject application and our comments are as follows:

BUILDING

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division).”

The copy of the DPW memorandum dated November 28, 2003, states in part:

“We oppose the approval of the application for the reasons noted below.

The minimum setbacks shall be maintained 1 hour fire resistance of Exterior walls less than 10 ft setback. 2 hour less than 5 ft..

The projections do not meet setback requirements and should be corrected.

The exterior wall or projections shall be constructed to provide a one-hour fire resistive occupancy separation.

Others: Electrical permits No. EH67038 and EK05299 are not finalized.”

- c. The State Department of Health (DOH) memorandum dated February 5, 2004 states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

4. Notice to Surrounding Property Owners. Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that first and second notices were mailed on November 7, 2003 and November 28, 2003, respectively, by the applicant.

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5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or comments from surrounding property owners or public were received.

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

It appears that the building encroachment problems were discovered after the original building had improvements were built pursuant to VAR 126 and other county permits. The applicant, on behalf of the current owners, is trying to resolve 21 year + old building encroachments disclosed by a recent survey of the property. The variance application's site plan map denotes the present building position and other site improvements, "AS BUILT", on the subject TMK property. The site plan identifies the building's building position together with other building issues within the property's minimum yards and attendant open yard requirements allowed pursuant VAR 126 and/or the Hawaii County Zoning Code. The applicant or current owners recently became aware of building encroachment issues. No evidence has been found to show indifference or premeditation by contractors, builders, and/or developer to deliberately create or intentionally allow the building encroachment to be constructed nearly 22 years ago. The office building improvements was constructed under valid building permit(s) and other construction permits issued by the County. It appears that, building inspections during construction of the office building constructed pursuant to 2-building permits issued in 1983 did not disclose any building encroachment issues or building setback irregularities. County permit records show BP No. 830427 and K05903 were closed on April 20, 1983 and June 20, 1983, respectively by the DWS.

### **ALTERNATIVES**

Alternatives available to the applicant or current owners to address and correct the existing building encroachments include the following actions:

1. Remove the building encroachments or redesigning or relocating the 2-story office building to fit within the correct building envelope prescribed by VAR 126 or Zoning Code.
2. Consolidation of property with adjoining lot(s)/right-of-way and resubdivision to modify property lines and adjust minimum yards.

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### **INTENT AND PURPOSE**

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

It appears that the 21 + year old building encroachments into the minimum yards permitted pursuant to VAR 126 are not physically and visually obtrusive from adjacent property(s) or rights-of-way. It appears these building encroachments beyond the limits established by VAR 126 were not detected at the time of construction and have not depreciated or detracted from the character of the surrounding neighborhood, public uses, and surrounding land patterns. Therefore, it is felt that the existing building encroachments within the yards identified on the variance application site plan map will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated November 20, 2003 and additional time to consider agency comments and other files was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than June 15, 2004.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

This variance request is approved subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers,

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employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. Portions of a "2-Story Building" on the subject TMK property will not meet Chapter 25, the Zoning Code's minimum yard and attendant minimum open yard requirements stipulated by VAR 126 or Chapter 25, Zoning. The approval of this variance allows building encroachments identified on the variance application's site plan map dated October 23, 2003 to remain, "AS BUILT", on the subject TMK property.
4. The status of the original electrical permits issued in conjunction with the construction of the office building improvements on the subject TMK property shall be closed or "finaled" by the DPW-Building Division prior to transfer of title or sale of the property.
5. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY:pak  
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xc: Real Property Tax Office - Kona  
Planning Dept. - Kona  
VAR 126